

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:

TOWN OF GREENEVILLE

RESPONDENT

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**DIVISION OF AIR POLLUTION
CONTROL**

CASE NO. APC19-0015

**TECHNICAL SECRETARY’S ORDER AND ASSESSMENT OF
CIVIL PENALTY**

Comes now, Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, and states that:

PARTIES

I.

Michelle Walker Owenby is the Technical Secretary of the Air Pollution Control Board (“Board”) and Director of the Division of Air Pollution Control (“Division”), Tennessee Department of Environment and Conservation (“Department”).

II.

The Town of Greeneville (“Respondent”) is a municipality that operates an air curtain destructor (“ACD”) located at 1555 Old Stage Road, Greeneville, Tennessee. Respondent’s responsible official for service of process is Todd Smith, City Administrator, at 200 North College Street, Greeneville, Tennessee 37745.

AUTHORITY

III.

Pursuant to Tennessee Code Annotated (“Tenn. Code Ann.”) § 68-201-116, the Technical Secretary may assess a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) per day for each day of violation of the Tennessee Air Quality Act (“Act”) or any rules or regulations promulgated thereunder (“Division Rules”) against any person who violates said

Act or Division Rules, and/or the Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Division Rules are violated. In addition, such person may also be liable for any damages to the State resulting therefrom.

IV.

Respondent is a “person” within the meaning of Tenn. Code Ann. § 68-201-102 and has violated the Division Rules as hereinafter stated.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof, as stated in Tenn. Code Ann. § 68-201-102.

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, as stated in Tenn. Code Ann. § 68-201-102.

VII.

Respondent operates an “air contaminant source” within the meaning of Tenn. Code Ann. § 68-201-102.

FACTS

VIII.

On July 20, 2018, the Technical Secretary issued Respondent construction permit number 973948 (“Permit 973948”) for an ACD, (Emission Source Reference No. 30-0303-01). On December 27, 2018, the Technical Secretary issued Respondent construction permit number 974935 (“Permit 974935”) which superseded Permit 973948. Permit 974935 was issued to increase the amount of wood burned from 2,100 tons to 4,000 tons annually.

Condition S1-5A of both Permit 974935 and 973948 states, in pertinent part:

Except as noted in Condition S1-5B, visible emissions from this source shall not exhibit greater than ten (10) percent opacity as determined by EPA Method 9, as published in 40 CFR 60, Appendix A (six-minute average).

IX.

On December 19, 2018, the Division conducted a 30-minute EPA Method 9 visible emissions evaluation (“VEE”) at Respondents’ facility in conjunction with a compliance inspection. During the 30-minute VEE, the highest six-minute average was 38.5%. This exceeded the applicable opacity standard of ten (10) percent required by Condition S1-5A of Permit 973948.

X.

The Division issued a Notice of Violation to Respondent on February 5, 2019, for a violation of Condition S1-5A.

XI.

A follow-up VEE was performed on February 27, 2019, by the Division. During this follow-up VEE at Respondent’s facility, the highest six-minute average was 18.3%. This also exceeded the applicable opacity standard of ten (10) percent required by Condition S1-5A of Permit 974935.

VIOLATIONS

XII.

By failing to comply with a condition of the construction permits, as discussed herein, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(d), which states:

Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be in accordance with the approved construction permit application or notice of intent; the provisions and stipulations set forth in the construction permit, notice of coverage, or notice of authorization; this Division 1200-03; any applicable measures of the control strategy; and the Tennessee Air Quality Act.

RELIEF

XIII.

WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby ORDER as follows:

1. As a condition of compliance with this ORDER and ASSESSMENT, Respondent shall submit a Proposed Schedule of Corrective Action, CN-1052 (APC-115), giving the Division proposed schedule of corrective action to bring the ACD's visible emissions into compliance with Permit 974935. The Proposed Schedule of Corrective Action shall be submitted on or before the 30th day after receipt of this ORDER and ASSESSMENT.
2. Respondent is assessed a total CIVIL PENALTY in the amount of **TWO THOUSAND TWO HUNDRED FIFTY DOLLARS (\$2,250)** for the violation of Division Rules, as discussed herein.
3. Respondent shall pay the assessed CIVIL PENALTY in full as follows: Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, **APC19-0015**, should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made on or before the thirty-first (31st) day after receipt of this ORDER and ASSESSMENT.

The Technical Secretary does not expressly or implicitly waive her authority pursuant to any provision of the Act or Division Rules by issuing this ORDER AND ASSESSMENT OF CIVIL PENALTY. Failure to comply with any of the requirements of this ORDER could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

NOTICE OF RIGHTS

Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), allow Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for

requesting a hearing must be RECEIVED by the Technical Secretary within THIRTY (30) DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

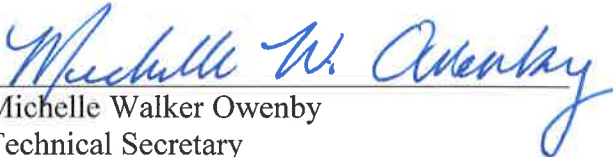
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. **Artificial respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee.** Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny this Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-201-116 (up to \$25,000 per day per violation). Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing, and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Technical Secretary, Tennessee Division of Air Pollution Control, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Attn: Tammy Gambill, Division of Air Pollution Control, William R.

Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243 or via e-mail to air.pollution.control@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, APC19-0015, should be written on all correspondence regarding this matter.**

Issued by the Technical Secretary, Tennessee Air Pollution Control Board, Department of Environment and Conservation, on this 26th day of AUGUST, 2019.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:


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